

**Title 19—DEPARTMENT OF
HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 81—Certification**

19 CSR 30-81.010 General Certification Requirements

PURPOSE: This rule sets forth application procedures and general certification requirements for nursing facilities certified under the Title XIX (Medicaid) program and skilled nursing facilities under Title XVIII (Medicare), and procedures to be followed by nursing facilities when requesting a nurse staffing waiver.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Definitions.

(A) Certification shall mean the determination by the Missouri Department of Health and Senior Services, or the Centers for Medicare and Medicaid Services, that a licensed skilled nursing or intermediate care facility (SNF/ICF) licensed under Chapter 198, RSMo, or an ICF for person with mental retardation (ICF/MR), is in substantial compliance with all federal requirements and is approved to participate in the Medicaid or Medicare programs.

(B) CMS shall mean the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

(C) Cost reporting year shall mean the facility's twelve (12)-month fiscal reporting period covering the same twelve (12)-month period that the facility uses for its federal income tax reporting.

(D) Distinct part shall mean a portion of an institution or institutional complex that is certified to provide SNF or NF services. A distinct part must be physically distinguishable from the larger institution and must consist of all beds within the designated area. The distinct part may be a separate building, floor, wing, ward, hallway or several rooms at one end of a hall or one side of a corridor.

(E) Department shall mean the Missouri Department of Health and Senior Services.

(F) ICF/MR shall mean intermediate care facility for persons with mental retardation.

(G) Medicaid shall mean Title XIX of the federal Social Security Act.

(H) Medicare shall mean Title XVIII of the federal Social Security Act.

(I) Nursing facility (NF) shall mean an SNF or ICF licensed under Chapter 198, RSMo which has signed an agreement with the Department of Social Services to participate in the Medicaid program and which is certified by the department. As used within the contents of this rule, licensed SNFs, SNF/ICF and ICFs participating in the Medicaid program are subject to state and federal laws and regulations for participation as an NF.

(J) Section for Long Term Care (SLTC) shall mean that section of the department responsible for licensing and regulating long-

-term care facilities licensed under Chapter 198, RSMo.

(K) Skilled nursing facility (SNF) shall mean an SNF licensed under Chapter 198, RSMo which has a signed agreement with the CMS to participate in the Medicare program and which has been recommended for certification by the department.

(L) Title XVIII shall mean the Medicare program as provided for in the federal Social Security Act.

(M) Title XIX shall mean the Medicaid program as provided for in the federal Social Security Act.

(2) An operator of an SNF or ICF licensed by the department electing to be certified as a provider of skilled nursing services under the Title XVIII (Medicare) or NF services under the Title XIX (Medicaid) program of the Social Security Act; or an operator of a facility electing to be certified as an ICF/MR facility under Title XIX shall submit application materials to the department as required by federal law and shall comply with standards set forth in the *Code of Federal Regulations* (CFR) of the United States Department of Health and Human Services in 42 CFR chapter IV, part 483, subpart B for nursing homes and 42 CFR chapter IV, part 483, subpart I for ICF/MR facilities, as appropriate.

(A) For Medicaid, the application shall include:

1. Long Term Care Facility Application for Medicare and Medicaid, Form CMS-671 (12/02), incorporated by reference in this rule and available through the Centers for Medicare and Medicaid website: <http://www.cms.hhs.gov/forms/>, or by mail at: Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850;

2. Form DA-113, Bed Classification for Licensure and Certification by Category (8-05), incorporated by reference in this rule and available through the department's website: www.dhss.mo.gov, or by mail at: Department of Health and Senior Services Warehouse, Attention General Services Warehouse, PO Box 570, Jefferson City, MO 65102-0570, telephone: (573) 526-3861.

(B) For Medicare, the application shall include:

1. Long Term Care Facility Application for Medicare and Medicaid;

2. Expression of Intermediary Preference Form (8-05), incorporated by reference in this rule and available through the department's website: www.dhss.mo.gov, or by mail at: Department of Health and Senior Services Warehouse, Attention General Services Warehouse, PO Box 570, Jefferson City, MO 65102-0570, telephone: (573) 526-3861;

3. Form DA-113, Bed Classification for Licensure and Certification by Category;

4. Three (3) copies of Health Insurance Benefit Agreement, Form CMS-1561 (07/01), incorporated by reference in this rule and available through the Centers for Medicare and Medicaid website: <http://www.cms.hhs.gov/forms/>, or by mail at: Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850;

5. Three (3) copies of Assurance of Compliance, Form HHS-690 (5/97), incorporated by reference in this rule and available through the Centers for Medicare and Medicaid website: <http://www.cms.hhs.gov/forms/>, or by mail at the U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201, telephone: (202) 619-0257; Toll Free: 1 (877) 696-6775.

6. The forms incorporated by reference in subsections (2)(A) and (B) do not include any later amendments or additions.

(C) SNFs or NFs which are newly certified or which are undergoing a change of ownership shall submit an initial

certification fee in the amount up to one thousand dollars (\$1,000) as stipulated by the department in writing to the operator following receipt of the properly completed application material referenced in section (2). The amount for the initial certification fee shall be the prorated portion of one thousand dollars (\$1,000) with prorating based on the month of receipt of the application in relation to the beginning of the next federal fiscal year. This initial certification fee shall be nonrefundable and a facility shall not be certified until the fee has been paid.

(D) All SNFs or NFs certified to participate in the Medicaid or Medicare program(s) shall submit to the department an annual certification fee of one thousand dollars (\$1,000) prior to October 1 of each year. If the fee is not received by that date each year, a late fee of fifty dollars (\$50) per month shall be payable to the department. If payment of any fees due is not received by the department by the time the facility license expires or by December 31 of that year, whichever is earlier, the department shall notify the Division of Medical Services and the CMS recommending termination of the Medicaid or Medicare agreement as denial of license will occur as provided in 19 CSR 30-82.010 and section 198.022, RSMo.

(3) Application material shall be signed and dated and submitted to the department's SLTC licensure unit at least fourteen (14) working days prior to the date the facility is ready to be surveyed for compliance with federal regulations (Initial Certification Survey). The operator or authorized representative shall notify the appropriate department regional office by letter or by phone as to the date the facility will be ready to be surveyed. There shall be at least two (2) residents in the facility before a survey can be conducted. The facility shall already be licensed or with licensure in process shall be in compliance with all state rules.

(4) Any facility certified for participation as an NF in the Title XIX Medicaid program electing to participate in the Title XVIII Medicare program shall submit an application signed and dated by the operator or his or her authorized representative to the department's SLTC central office licensure unit. The department will recommend Medicare certification to the CMS effective the date the application material is received by the department or a subsequent date if requested by the provider, provided the facility was in compliance with all federal and state regulations for SNFs at the last survey conducted by the department and provided the facility's application is complete and has been approved by the Medicare fiscal intermediary.

(5) Any facility certified for participation in the Medicare program wishing to participate in the Medicaid program shall submit a signed and dated application to the department central office. The department will certify the facility for Medicaid participation effective the date the application is received by the department or a subsequent date requested by the provider, provided the facility was in compliance with all federal regulations at the last survey conducted by the department and the application is complete.

(6) For newly certified facilities, the facility will be certified for either Medicare or Medicaid participation effective the date the facility receives a license at the proper level or the date the facility achieves substantial compliance with the federal participation requirements, whichever is the later date. The application shall be completed. For certification in the Title XVIII (Medicare)

program, the Medicare fiscal intermediary must approve the application and the CMS must concur with the department's recommendation.

(7) The department shall conduct federal surveys in SNFs, NFs and ICF/MR facilities, utilizing regulations and procedures contained in—

(A) *The State Operations Manual* (SOM) (HCFA Publication 7);

(B) The Survey and Certification Regional letters received by the department from the CMS;

(C) For SNFs and NFs, federal regulation 42 CFR chapter IV, part 483, subpart B; and

(D) For ICF/MR facilities, federal regulation 42 CFR chapter IV, part 483, subpart I.

(8) A facility, in its application, shall designate the number of beds to be certified and their location in the facility. A facility can be wholly or partially certified. If partially certified, the beds shall be in a distinct part of the facility and all beds shall be contiguous.

(9) If a facility certified to participate in the Title XIX (Medicaid) or Title XVIII (Medicare) program elects to change the size of its distinct part, it must submit a written request to the Licensure/Certification Unit or the ICF/MR Unit of the department, as applicable. The request shall specify the room numbers involved, the number of beds in each room and the facility cost reporting year end date. The request must include a floor diagram of the facility and a signed DA-113 form, Bed Classification for Licensure and Certification by Category. A facility is allowed two (2) changes in the size of its distinct part during the facility cost reporting year. This may be two (2) increases or one (1) increase and one (1) decrease. It may not be two (2) decreases. The first change can be done only at the beginning of the facility cost reporting year and the second change can be done effective at the beginning of a facility cost reporting quarter within that facility cost reporting year. All requests must be submitted to the Licensure/Certification Unit or the ICF/MR Unit of the department at least forty-five (45) days in advance. Any facility wishing to eliminate its distinct part to go to full certification may do so effective at the beginning of the next facility cost reporting quarter with forty-five (45) days notice. The distinct part may be reestablished only at the beginning of the next facility cost reporting year. A facility may change the location of the distinct part with thirty (30) days notice to the Licensure/Certification Unit or the ICF/MR Unit of the department.

(10) If a facility certified to participate in the Title XIX (Medicaid) or Title XVIII (Medicare) program undergoes a change of operator, the new operator shall submit an application as specified in section (2) of this rule. The application shall be submitted within five (5) working days of the change of operator.

For applications made for the Title XIX (Medicaid) program, the department shall provide the application to the Division of Medical Services of the Department of Social Services so that a provider agreement can be negotiated and signed. For applications made for the Title XVIII (Medicare) program, the department

shall provide the application to the CMS. Certification status will be retained unless or until formally denied.

(11) If it is determined by the department that a facility certified to participate in Medicaid or Medicare does not comply with federal regulations at the time of a federal survey, complaint investigation or state licensure inspection, the department shall take enforcement action using the regulations and procedures contained in the following sources:

- (A) 42 CFR chapter IV, part 431, subparts D, E and F;
- (B) 42 CFR chapter IV, part 442;
- (C) 42 U.S.C. Section 1395i-3;
- (D) 42 U.S.C. Section 1396(r);
- (E) Sections 198.026 and 198.067, RSMo; and
- (F) 13 CSR 70-10.015 and 13 CSR 70-10.030.

(12) If a facility certified to participate in the Medicaid Title XIX program has been decertified as a result of noncompliance with the federal requirements, the facility can be readmitted to the Medicaid program by submitting an application for initial participation in the Medicaid program. After having received the application, the department shall conduct

a survey at the earliest possible date to determine if the facility is in substantial compliance with all federal participation requirements. The effective date of participation will be the date the facility is found to substantially comply with all federal requirements.

(13) If a change in the administrator or the director of nursing of a facility occurs, the facility shall provide written notice to the department's SLTC central office licensure unit within ten (10) calendar days of the change. The notice shall show the effective date of the change, the identity of the new director of nursing or administrator and a copy of his or her license or the license number. Change of administrator information shall be submitted as a notarized statement by the operator in accordance with section 198.018, RSMo.

(14) An NF may request a waiver of nurse staffing requirements to the extent the facility is unable to meet the requirements including the areas of twenty-four (24)-hour licensed nurse coverage, the use of a registered nurse for eight (8) consecutive hours seven (7) days per week and the use of a registered nurse as director of nursing.

(A) Requests for waivers shall be made in writing to the director of the Section for Long Term Care.

(B) Requests for waivers will be considered only from facilities licensed under Chapter 198, RSMo as ICFs which do not have a nursing pool agency that is within fifty (50) miles, within state boundaries, and which can supply the needed nursing personnel.

(C) The department shall consider each request for a waiver and shall approve or disapprove the request in writing postmarked within thirty (30) working days of receipt or, if additional information is needed, shall request from the facility the additional information or documentation within ten (10) working days of receipt of the request.

(D) Approval of a nurse waiver request shall be based on an evaluation of whether the facility has been unable, despite diligent efforts—including offering wages at the community prevailing rate for nursing facilities—to recruit the necessary personnel. Diligent effort shall mean prominently advertising for the necessary nursing personnel in a variety of local and out-of-the-area publications, including newspapers and journals within a fifty

(50)-mile radius, and which are within state boundaries; contacts with nursing schools in the area; and participation in job fairs. The operator shall submit evidence of the diligent effort including:

1. Copies of newspapers and journal advertisements, correspondence with nursing schools and vocational programs, and any other relevant material;

2. If there is a nursing pool agency within fifty (50) miles which is within state boundaries and the agency cannot consistently supply the necessary personnel on a per diem basis to the facility, the operator shall submit a letter from the agency so stating;

3. Copies of current staffing patterns including the number and type of nursing staff on each shift and the qualifications of licensed nurses;

4. A current Resident Census and Condition of Residents, Form CMS-672 (10/98), incorporated by reference in this rule and available through the Centers for Medicare and Medicaid website: <http://www.cms.hhs.gov/forms/>, or by mail at: Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850. This rule does not incorporate any subsequent amendments or additions;

5. Evidence that the facility has a registered nurse consultant required under 19 CSR 30-85.042 and evidence that the facility has made arrangements to assure registered nurse involvement in the coordination of the assessment process as required under 42 CFR 483.20(3);

6. Location of the nurses' stations and any other pertinent physical feature information the facility chooses to provide;

7. Any other information deemed important by the facility including personnel procedures, promotions, staff orientation and evaluation, scheduling practices, benefit programs, utilization of supplemental agency personnel, physician-nurse collaboration, support services to nursing personnel and the like; and

8. For renewal requests, the information supplied shall show diligent efforts to recruit appropriate personnel throughout the prior waiver period. Updates of prior submitted information in other areas are acceptable.

(E) In order to meet the conditions specified in federal regulation 42 CFR 483.30, the following shall be considered in granting approval:

1. There is assurance that a registered nurse or physician is available to respond immediately to telephone calls from the facility for periods of time in which licensed nursing services are not available;

2. There is assurance that if a facility requesting a waiver has or admits after receiving a waiver any acutely ill or unstable residents requiring skilled nursing care, the skilled care shall be provided in accordance with state licensure rule 19 CSR 30-85.042; and

3. The facility has not received a Class I notice of noncompliance in resident care within one hundred twenty (120) days of the waiver request or the department has not conducted an extended survey in the facility within one (1) year of the waiver request. Any facility which receives a Class I notice of noncompliance in resident care or an extended survey while under waiver status will not have the waiver renewed unless the problem has been corrected and steps have been taken to prevent recurrence. If a facility received more than one (1) Class I notice of noncompliance in resident care during a waiver period, the department will consider revocation of the waiver.

(F) The facility shall cooperate with the department in providing the proper documentation. For renewal requests, the request and proper documentation shall be submitted to the department at least forty-five (45) days prior to the ending date of the current waiver period. If any changes occur during a waiver period that affect the status of the waiver, a letter shall be submitted to the deputy director of institutional services within ten (10) days of the changes. The request for a waiver or renewal of a waiver shall be denied if the facility fails to abide by these previously mentioned time frames.

(G) If a waiver request is denied, the department shall notify the facility in writing and within twenty (20) days, the facility shall submit to the department a written plan for how the facility will recruit the required personnel. If appropriate personnel are not hired within two (2) months, the department shall initiate enforcement proceedings.

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*Original authority: 660.050, RSMo 1984, amended 1988, 1992, 1993, 1994, 1995, 2001

